

How Retail Establishments Can Comply with National Organic Program Regulations

Introduction

Retail food establishments (retailers) do not need to be certified in order to sell organic agricultural products. However, they are responsible for verifying and maintaining the organic integrity of those products.

The following guidance is designed to delineate what the National Organic Program (NOP) regulations require of retailers (Part I), and to suggest procedures that they may establish to meet these requirements (Part II).

Part I--NOP Regulations and Retailers

Requirements for All Retailers

The NOP regulations, section 205.100(c)(1), state that **"any operation that knowingly sells or labels a product as organic, except in accordance with the Act [Organic Foods Production Act of 1990, as amended], shall be subject to a civil penalty of not more than \$10,000 per violation."** This provision applies to all retailers of organic agricultural products, whether they fall into the exempt or excluded categories as described below. All retailers must perform due diligence to be sure that the products they label and sell as organic are indeed organic.

Note: Please see **Definitions** at the end of Part I for the official definitions of a Retail Food Establishment, Processing, and Exempt and Excluded Retailers.

Exempt Retailers (those that do not process)

Section 205.101(a)(2) of the NOP regulations exempts all retailers that do not process organic products from organic certification. It also exempts them from the rest of the requirements in the regulations.

However, as stated above, exempt retailers must still ensure that the organic integrity of the products they sell is maintained. Essentially, exempt retailers can maintain organic integrity by verifying the organic status of products when they are received, ensuring that the organic products are not mingled with nonorganic products, and preventing organic products from coming in contact with prohibited substances. Sections of this document aimed at "excluded retailers" (those that process organic food) will be useful to "exempted retailers" in this regard.

Because the NOP regulations' definition of processing is far-reaching and inclusive, most produce, meat, and bulk food departments are considered to process their organic products and will fall into the "excluded" retailers category instead of the "exempt" category.

Excluded Retailers (those that process)

IMPORTANT: Any certified organic product that is processed at the retail level loses its certified status, but not its organic status. It may not be represented as certified and it may not display the USDA organic seal, or the certifying agent's name or seal. It may, however, still be sold and labeled as organic.

Section 205.101(b)(2) of the NOP regulations provides that retailers or portions of retailers that process, on the premises, raw and ready-to-eat food labeled as "100 percent organic," "organic," or "made with organic ingredients are excluded from organic certification. However, they must comply with the following NOP regulations.

Prevent Commingling and Contact with Prohibited Substances

Section 205.272

- Take measures to prevent the mingling of organic and nonorganic products and to prevent organic products from coming in contact with prohibited substances.
- Use packaging materials and storage containers or bins that contain no synthetic fungicides, preservatives, or fumigants.
- Do not use or reuse any bag or container that has been in contact with any substance that would compromise the organic integrity of any organically produced product—unless the reusable bag or container has been thoroughly cleaned and poses no risk of contact with the substance that could compromise organic integrity.

Label Properly

Section 205.308

When displaying bulk, certified "100 percent organic" or "organic" food in self-service bins or creating other product displays you may post signs that provide the same information as provided on the original container or shipping documents.

--For example, your display, labeling, and display containers may use the USDA Organic seal and the certifying agent's mark, logo, or seal. (Remember, the certifying agent's mark, etc., cannot be larger than the USDA Organic seal.)

--Or, you may simply indicate that the product is "organic," and not use any seals, marks, or logos.

If you are not certified and you prepare a "100 percent organic" or "organic" agricultural product in other than packaged form at the point of retail sale you:

- May use the term, "100 percent organic" or "organic," to modify the name of the product in retail display, labeling, and display containers. The term 'organic' must be used to identify the organic ingredients listed in the ingredient statement.
- Must not use the USDA seal in the retail display or labeling, or on display containers.
- Must not use the seal, logo, or other identifying mark of a certifying agent in the retail display or labeling, or on display containers.

Section 205.309

When displaying certified agricultural products in other than packaged form containing at least 70 percent organically produced ingredients you may use the phrase, *made with organic (specified ingredients or food group(s))*, to modify the name of the product in retail

displays, labeling, and display containers.

- Such statement must not list more than three organic ingredients or food groups.
- The term 'organic' must be used to identify the organic ingredients listed in the ingredient statement.
- The certifying agent's seal, logo, or other identifying mark may be displayed.
- The USDA seal must not be displayed in conjunction with "made with organic" agricultural products.

If you are not certified and you prepare a "made with organic" agricultural product in other than packaged form at the point of retail sale you:

- May use the term, "made with organic" to modify the name of the product in retail display, labeling, and display containers. The term 'organic' must be used to identify the organic ingredients listed in the ingredient statement.
- Must not list more than three organic ingredients of food groups.
- Must not use the USDA seal in the retail display or labeling, or on display containers.
- Must not use the seal, logo, or other identifying mark of a certifying agent seal in the retail display or labeling, or on display containers.

Section 205.310

- If you buy product from a small-scale organic producer who is exempt from certification, you may identify this product as "organic." But, you may not identify this product as being "certified organic," and you may not display the seal, logo, or other identifying mark of a certifying agent nor may you display the USDA Organic seal in conjunction with this product.
- If you buy product from a small-scale organic producer who is exempt from certification and use this product as an ingredient in a multiingredient product, you may not identify this ingredient as "organic."
- If you are not certified and you use certified agricultural products to prepare a "100 percent organic," "organic," or "made with organic" agricultural product you may not identify this product as being "certified organic." You also may not display the seal, logo, or other identifying mark of a certifying agent nor may you display the USDA Organic seal in conjunction with this product. This holds true for all forms of processing including the cutting of whole products (for example watermelon, cheese) into smaller portions.

Keep Records

Sections 205.101 and 205.103

The NOP also recommends maintaining records, for at least 3 years, sufficient to demonstrate general compliance with the above sections.

Records should include date of purchase, source, quantities, and certifying agent for organic

products. (To make sure that the certifying agent is USDA-accredited, check the NOP website at www.ams.usda.gov/nop.) Records should also include documentation of methods used for prevention of commingling and contact with prohibited substances, and pest control methods.

Records may be important if the organic status of a product sold by the retailer is ever questioned. Maintenance of records may serve to lessen store liability by proving the retailer has used due diligence to preserve organic integrity.

Definitions

Retail Food Establishment. A restaurant; delicatessen; bakery; grocery store; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat food. *Section 205.2*

Processing. Acts including, but not limited to, cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, distilling, extracting, slaughtering, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or chilling, and packaging, canning, jarring, or otherwise enclosing food in a container. *Sections 205.2 and 205.270(a)*

Exempt Retailer. A retail food establishment, or portion of a retail food establishment, that handles organically produced agricultural products, but does not process them. *Section 205.101(a)(2)*

Excluded Retailer. A retail food establishment, or portion of a retail food establishment, that processes, on the premises of the retail food establishment, raw and ready-to-eat food from agricultural products that were previously labeled as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))." *Section 205.101(b)(2)*

Part II--Best Practices for Retailers

Four major areas of operation where retailers must be mindful of maintaining the organic integrity of a product are **Receiving**, **Storage**, **Preparation**, and **Display**. The following sections describe procedures that can be established in each of these major areas that will help retailers maintain the organic integrity of their products.

Pest management, which is a concern throughout the store, is addressed in detail in Storage.

Labeling is addressed in Part 1. More labeling information can be found at www.ams.usda.gov/nop/Q&A.html#Labeling and www.ams.usda.gov/nop/ProdHandlers/LabelTable.htm.

RECEIVING

- Trucks should not smell of odors suggesting that prohibited pest control products may have come into contact with organic products.
- Keep receiving area free of prohibited pest control products and other prohibited substances if they can come into contact with organic products.
- Pallets should be built and stacked, and boxes should be stacked so that:

--No nonorganic wet produce is placed above any organic product without an impermeable barrier in between.

--No nonorganic and organic produce come into physical contact with each other (touching of cardboard boxes is okay).

- The bill of lading should state "organic" for all organic products.
- Boxes of organic product should be labeled "organic" and have a certifying agent's name on them (if manufactured after October 21, 2002).
- Make sure packages of organic products have not been broken or torn, which might lead to commingling or contact with prohibited substances.

STORAGE

- Do not stack nonorganic wet produce, meat/poultry/seafood, or bulk items above any unpackaged organic product—including on a hand truck, or while stored in a cooler or storage area.
- Designate a specific part of a cooler or storage area for organic product only, to prevent confusion and commingling.
- Separate unpackaged nonorganic and organic dry products. A barrier (such as cardboard) would work best, but a sufficient amount of space to preclude commingling is acceptable.
- Do not reuse boxes, bags, or tubs previously used for unpackaged nonorganic products to store unpackaged organic products--unless the reusable boxes, bags, or tubs has been thoroughly cleaned and poses no risk of contact with a substance that could compromise the organic integrity of the organic product.
- Use packaging materials and storage containers or bins that contain no synthetic fungicides, preservatives, or fumigants.

Pest Control

The following management practices should be used to prevent pests, including but not limited to:

- Removal of pest habitat, food sources, and breeding areas;
- Prevention of access to handling facilities; and
- Management of environmental factors, such as temperature, light humidity, atmosphere, and air circulation to prevent pest reproduction.

Pests may be controlled through:

- Mechanical or physical controls including but not limited to traps, light, or sound; or
- Lures and repellants using nonsynthetic or synthetic substances consistent with the National List.

If the practices listed above are not effective to prevent or control pests, a nonsynthetic or synthetic substance consistent with the National List may be applied.

If the practices listed above and the materials on the National List are not effective to prevent or control pests, a synthetic substance not on the National List may be applied. Retailers and pest management providers must take measures to prevent the substance used from contacting the organically produced products or ingredients.

Note: The National List of Allowed and Prohibited Substances can be found in the National Organic Program regulations, sections 205.600-606. Basically, all nonsynthetic substances are allowed in organic production and handling unless they are on this list, and all synthetic substances are prohibited unless they are on this list.

The NOP regulations address pesticides as they relate to organic production and handling, and are not specific to retail settings. However, the following information on allowed and prohibited pesticides should be used when choosing pesticides for retail settings.

Synthetic Substances Allowed by NOP Regulations for Pest Control (National List)

As animal repellents

Soaps, ammonium—for use as a large animal repellent, no contact with organic food or soil.

As insecticides (including acaricides or mite control)

- Ammonium carbonate—for use as bait in insect traps only, no direct contact with organic food or soil.
- Boric acid—structural pest control, no direct contact with organic food.
- Elemental sulfur.
- Lime sulfur—including calcium polysulfide.
- Oils, horticultural—narrow range oils as dormant, suffocating, and summer oils.
- Insecticidal soaps.
- Sticky traps/barriers.

As insect attractants

- Pheromones.

As rodenticides

- Sulfur dioxide—underground rodent control only (smoke bombs).
- Vitamin D3.

As synthetic inert ingredients—as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in section 205.601 and used as an active pesticide ingredient in accordance with any limitations or the use of such

substances.

- EPA List 4—Inerts of Minimal Concern.

Nonsynthetic Substances Prohibited by NOP Regulations for Pest Control (National List)

- Arsenic
- Lead salts
- Sodium fluoaluminate (mined)
- Strychnine
- Tobacco dust (nicotine sulfate)
- Potassium chloride—unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil.

PREPARATION

Note: Those substances defined by FDA as food contact substances are not considered ingredients and therefore are not regulated by the NOP. Food contact substances include cleaners and sanitizers. Retailers should follow all appropriate and mandated food safety protocols and FDA regulations regarding cleaning and sanitizing work surfaces, equipment, etc. Please see related NOP policy statement at <http://www.ams.usda.gov/nop/NOP/PolicyStatements/SyntheticSubstances.html>.

Produce

- Keep the prep area free of prohibited pest control products.
- Use designated organic prep trays for crisping organic produce.
- Prior to prepping organic produce, thoroughly clean all sinks, work surfaces and equipment, such as knives, cutting boards, etc.
- After any nonorganic product prepping, completely drain sink and repeat cleaning procedures before resuming organic product prepping.

Meat/Poultry/Seafood

- Thoroughly clean and sanitize all utensils (including cutting boards, knives, tubs, trays, and grinders) after use with nonorganic meat/poultry/seafood, prior to use with organic meat/poultry/seafood.
- Make sure you are using the proper PLU designated with the organic meat/poultry/seafood description.
- Stock organic meat/poultry/seafood into the designated area of the retail floor immediately following production.
- Reseal and return any unused organic product to the designated organic area of the

cooler.

- When a customer requests a specific cut of an organic meat/poultry/seafood, clean and sanitize your work area and equipment before preparing their organic order (if you do not have an area and equipment dedicated to organic).

Bulk Foods

- If organic bulk products are repackaged, the new packages must not have been used previously for nonorganic products, and must not contain fumigants.
- Prior to repackaging organic bulk products, all work surfaces and utensils must be thoroughly cleaned, if they were previously used for nonorganic products.

Prepared Foods

- When baking, place organic dishes or baked goods on the top shelves of the oven. Make sure drippings from nonorganic items (such as nonorganic chickens) do not drip onto roasting organic items.
- Use bread slicer as designated: only for organic, or only for nonorganic.
- Segregate or physically separate finished organic baked goods from nonorganic baked goods. This could be done by enclosing baked goods in paper or plastic bags.
- Change ingredients labels and signage in deli case as needed to reflect any change in organic ingredients.
- Display-case garnish items (such as decorative parsley and kale) must be organic if placed under or touching a product labeled organic.

DISPLAY

- Do not display wet nonorganic produce or meat/poultry/seafood above organic produce or meat/poultry/seafood.
- Segregate or physically separate organic and nonorganic produce, baked goods, etc., on tables, bins, or display cases.
- Make sure that nonorganic meat/poultry/seafood do not touch or drip on organic meat/poultry/seafood.
- Label all displays to clearly differentiate between organic and nonorganic products.
- Thoroughly clean display materials (liners, baskets, bins, and bowls) prior to their being switched from nonorganic to organic displays. If a container is not washable, it should have a washable or changeable liner, or else it should be designated for organic or nonorganic use only.
- Garnish items (such as decorative parsley or kale) must be organic if placed under or touching organic products (produce, meat, deli items, etc.).
- Knives or other utensils used to prep or cut samples for customers must be thoroughly cleaned between use for nonorganic and organic products.

- Self-serve bins containing organic bulk products should be placed above bins containing nonorganic products (to prevent nonorganic product from spilling into bins containing organic product).
- Scoops and other utensils for use in nonorganic self serve bins should not be available for use in organic self-serve bins.
- Do not put organic bulk products into bins previously used for nonorganic product without thoroughly cleaning.
- Provide separate and prominently labeled coffee grinders for organic and nonorganic coffee beans. Place the grinders such that it is inconvenient for the customer to use the wrong coffee grinder.

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